

IC 34-18-14

Chapter 14. Limits on Damages

IC 34-18-14-1

"Cost of the periodic payments agreement" defined

Sec. 1. As used in this chapter, "cost of the periodic payments agreement" means the amount expended by the health care provider (or its insurer), the commissioner, or the commissioner and the health care provider (or its insurer), at the time the periodic payments agreement is made, to obtain the commitment from a third party to make available money for use as future payment, the total of which may exceed the limits provided in section 3 of this chapter.

As added by P.L.1-1998, SEC.13.

IC 34-18-14-2

"Periodic payments agreement" defined

Sec. 2. As used in this chapter, "periodic payments agreement" means a contract between a health care provider (or its insurer) and the patient (or the patient's estate), under which the health care provider is relieved from possible liability in consideration of:

- (1) a present payment of money to the patient (or the patient's estate); and
- (2) one (1) or more payments to the patient (or the patient's estate) in the future;

whether or not some or all of the payments are contingent upon the patient's survival to the proposed date of payment.

As added by P.L.1-1998, SEC.13.

IC 34-18-14-3

Recovery limitations

Sec. 3. (a) The total amount recoverable for an injury or death of a patient may not exceed the following:

- (1) Five hundred thousand dollars (\$500,000) for an act of malpractice that occurs before January 1, 1990.
- (2) Seven hundred fifty thousand dollars (\$750,000) for an act of malpractice that occurs:
 - (A) after December 31, 1989; and
 - (B) before July 1, 1999.
- (3) One million two hundred fifty thousand dollars (\$1,250,000) for an act of malpractice that occurs after June 30, 1999.

(b) A health care provider qualified under this article (or IC 27-12 before its repeal) is not liable for an amount in excess of two hundred fifty thousand dollars (\$250,000) for an occurrence of malpractice.

(c) Any amount due from a judgment or settlement that is in excess of the total liability of all liable health care providers, subject to subsections (a), (b), and (d), shall be paid from the patient's compensation fund under IC 34-18-15.

(d) If a health care provider qualified under this article (or IC 27-12 before its repeal) admits liability or is adjudicated liable solely by reason of the conduct of another health care provider who

is an officer, agent, or employee of the health care provider acting in the course and scope of employment and qualified under this article (or IC 27-12 before its repeal), the total amount that shall be paid to the claimant on behalf of the officer, agent, or employee and the health care provider by the health care provider or its insurer is two hundred fifty thousand dollars (\$250,000). The balance of an adjudicated amount to which the claimant is entitled shall be paid by other liable health care providers or the patient's compensation fund, or both.

As added by P.L.1-1998, SEC.13. Amended by P.L.111-1998, SEC.14.

IC 34-18-14-4

Discharge of possible liability; periodic payments agreement

Sec. 4. (a) If the possible liability of the health care provider to the patient is discharged solely through an immediate payment, the limitations on recovery from a health care provider stated in section 3(b) and 3(d) of this chapter apply without adjustment.

(b) If the health care provider agrees to discharge its possible liability to the patient through a periodic payments agreement, the amount of the patient's recovery from a health care provider in a case under this subsection is the amount of any immediate payment made by the health care provider or the health care provider's insurer to the patient, plus the cost of the periodic payments agreement to the health care provider or the health care provider's insurer. For the purpose of determining the limitations on recovery stated in section 3(b) and 3(d) of this chapter and for the purpose of determining the question under IC 34-18-15-3 of whether the health care provider or the health care provider's insurer has agreed to settle its liability by payment of its policy limits, the sum of:

(1) the present payment of money to the patient (or the patient's estate) by the health care provider (or the health care provider's insurer); plus

(2) the cost of the periodic payments agreement expended by the health care provider (or the health care provider's insurer); must exceed one hundred eighty-seven thousand dollars (\$187,000).

(c) More than one (1) health care provider may contribute to the cost of a periodic payments agreement, and in such an instance the sum of the amounts expended by each health care provider for immediate payments and for the cost of the periodic payments agreement shall be used to determine whether the one hundred eighty-seven thousand dollar (\$187,000) requirement in subsection (b) has been satisfied. However, one (1) health care provider or its insurer must be liable for at least fifty thousand dollars (\$50,000).

As added by P.L.1-1998, SEC.13. Amended by P.L.111-1998, SEC.15.

IC 34-18-14-5

Limitations on recovery from fund; direct payments; periodic payments

Sec. 5. (a) If the possible liability of the fund to the patient is discharged solely through a direct payment made under IC 34-18-15-1, the limitations on recovery from the patient's compensation fund established under section 3 of this chapter apply without adjustment.

(b) If an agreement is made to discharge the fund's possible liability to the patient through a periodic payments agreement, the amount of the patient's recovery from the fund is:

(1) the amount of any immediate payment made directly to the patient from the fund; plus

(2) the cost of the periodic payments agreement paid by the commissioner on behalf of the fund;

for the purposes of the limitations on recovery from the fund established under section 3 of this chapter.

As added by P.L.1-1998, SEC.13.